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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/049,876	06/07/2002	William F. Aftoora	WPA-1400	6290
23575	7590	09/20/2004	EXAMINER	
JOSEPH G CURATOLO, ESQ. RENNER KENNER GREIVE BOBAK TAYLOR & WEBER 24500 CENTER RIDGE ROAD, SUITE 280 WESTLAKE, OH 44145			BECKER, DREW E	
			ART UNIT	PAPER NUMBER
			1761	
DATE MAILED: 09/20/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	<b>Applicant(s)</b>
	10/049,876	AFTOORA, WILLIAM F.
	Examiner	<b>Art Unit</b>
	Drew E Becker	1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 22 July 2004.
- 2a) This action is **FINAL**.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) 33 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-32 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | Paper No(s)/Mail Date. _____ .  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____ .                                  |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election of claims 1-32 in the reply filed on July 22, 2004 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).
2. Claim 33 is withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected group, there being no allowable generic or linking claim.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
4. Claim 14 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
5. Claim 14 recites the limitation "the roux". There is insufficient antecedent basis for this limitation in the claim.

### ***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

Art Unit: 1761

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1-15 are rejected under 35 U.S.C. 102(b) as being anticipated by WO 96/29894.

WO 96/29894 teaches a food product comprising 5-80% of an edible fat (page 2, line 15), 1-20% starch (page 2, line 18), up to 40% water, taste, and flavor compounds (page 2, line 20), 0.5-15% milk ingredients (page 2, line 17), 0.25-5% gelatin (page 2, line 22), 10-35% water (page 4, line 22), the flavors including salt, spices, wine, bouillon, onions, garlic, cheese, and tomatoes (page 4, line 26 to page 5, line 16), maize starch (page 6, line 25), hydrocolloids such as carrageenan, agar, xanthan, and pectin (page 6, line 34), butter (page 2, line 27), modified starch (page 7, line 24), margarine (page 8, line 34), and potassium sorbate (page 9, line 28). Regarding claims 5-6 and 12-13, these claim do not positively indicate that, "seafood flavoring" for instance, is the chosen flavor.

### ***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 16-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 96/29894 as applied above, in view of Rigler et al [Pat. No. 3,928,252].

Art Unit: 1761

WO 96/29894 teaches the above mentioned components as well as the addition of carbon dioxide (page 9, lines 1-9). WO 96/29894 does not recite the use of sodium bicarbonate. Rigler et al teach a sauce comprising sodium bicarbonate (column 2, lines 60-70). It would have been obvious to one of ordinary skill in the art to incorporate the sodium bicarbonate of Rigler et al into the invention of WO 96/29894 since both are directed sauce products, since WO 96/29894 already included the addition of carbon dioxide (page 9, lines 1-9) but simply does not explain how it was achieved, and since Rigler et al teach that sodium bicarbonate was an effective source of carbon dioxide in sauces (column 2, lines 60-70).

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Bot et al [Pat. No. 6,086,937] teaches a sauce.

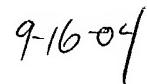
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Drew E Becker whose telephone number is 571-272-1396. The examiner can normally be reached on Mon.-Thur. 8am-5pm and every other Fri. 8am-4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 1761

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Drew E Becker  
Primary Examiner  
Art Unit 1761

  
9-16-04